

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

EBONY JOHNSON-KEE, as Proposed  
Administrator of the Estate of SHARIEF RUSSELL  
JR, Deceased,

Plaintiff(s),

v.

SARAH MARIE SPADAFINA MD and THE  
FLOATING HOSPITAL (INCORPORATED),

Defendants.

Civil Action No. 21-CV-00960

(Cogan, J.)

**STIPULATION OF DISMISSAL WITHOUT PREJUDICE**

WHEREAS Plaintiff Ebony Johnson-Kee, as Proposed Administrator of the Estate of Sharief Russell, Jr., Deceased, commenced the above-referenced action in the Supreme Court of the State of New York, County of Queens, with Index Number 722447/2020 (“the State Court Litigation”), and named as Defendants Sarah Marie Spadafina, M.D., and The Floating Hospital (Incorporated).

WHEREAS in the State Court Litigation, Plaintiff alleges negligent pediatric care against the Defendants. Specifically, the Verified Complaint alleges that on November 20, 2018, Defendants negligently provided medical care to Decedent and Decedent’s mother at medical facilities owned and operated by Defendant, The Floating Hospital (Incorporated), which is alleged to have caused Decedent pre-death conscious pain and suffering up until Decedent’s death on November 20, 2018.

WHEREAS at the time of the alleged November 20, 2018 treatment, Defendant The Floating Hospital was a federally supported health center deemed by the Department of Health and Human Services (the “Department”) eligible for coverage under the Federal Tort Claims Act

pursuant to 42 U.S.C. § 233(g)-(h), and was acting within the course and scope of such deemed employment with the United States of America.

WHEREAS at the time of the alleged November 20, 2018 treatment, Defendant Sarah Marie Spadafina, M.D., provided medical services as an employee of Defendant The Floating Hospital, and was deemed, pursuant to 42 U.S.C. § 233(g)-(h), eligible for coverage under the Federal Tort Claims Act and was acting within the course and scope of such deemed employment with the United States of America.

WHEREAS pursuant to 42 U.S.C. § 233(a), (c), and (g), and the above-referenced certification, which provides that Defendants Sarah Marie Spadafina, M.D., and The Floating Hospital (Incorporated) were acting within the course and scope of their federal employment at the time of the incident out of which the claim arose, the claims asserted against Sarah Marie Spadafina, M.D., and The Floating Hospital are deemed to be claims brought against the United States of America. Pursuant to the Certification filed with the Court, the United States of America is, by operation of law, substituted as the party defendant for Sarah Marie Spadafina, M.D., and The Floating Hospital (Incorporated).

WHEREAS on February 22, 2021, the State Court Litigation was removed to this Court pursuant to 42 U.S.C. § 233(c), and the United States of America was substituted as a party defendant.

WHEREAS parties are required to exhaust administrative remedies with the appropriate administrative agency, before filing an action pursuant to 28 U.S.C. § 2675.

WHEREAS Plaintiff Ebony Johnson-Kee has failed to exhaust her administrative remedies.

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff Ebony Johnson-Kee, as Proposed Administrator of the Estate of Sharief Russell, Jr., Deceased, and Defendants Sarah Marie Spadafina, M.D., and The Floating Hospital (Incorporated), and the United States of America, that:

- 1) The United States of America is, by operation of law, substituted as the party defendant for Sarah Marie Spadafina, M.D., and The Floating Hospital (Incorporated).
- 2) The above-captioned action shall be and hereby is dismissed without prejudice in its entirety pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. This dismissal is without costs, expenses, or fees.
- 3) The clerk of the Court is directed to enter judgment accordingly.

Dated: New York, New York  
February 22, 2021

The Fitzgerald Law Firm, P.C.  
538 Riverdale Avenue  
Yonkers, NY 10705

By: /s/ James P. Fitzgerald  
JAMES P. FITZGERALD  
*Counsel for the Plaintiff*

Dated: Brooklyn, New York  
February 23, 2021

SETH D. DUCHARME  
Acting United States Attorney  
*Counsel for Defendant*  
Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201

By: /s/ Matthew J. Mailloux  
MATTHEW J. MAILLOUX  
Assistant U.S. Attorney  
(718) 254-6176

SO ORDERED this

\_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
HONORABLE BRIAN M. COGAN  
United States District Judge